

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. December 20, 2013
Debtor. . 10:00 a.m.
.

HEARING RE. STATUS CONFERENCE
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 THE CLERK: All rise. Court is in session. Please
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 MR. CULLEN: May it please the Court, your Honor,
4 Thomas Cullen of Jones Day representing the city. As your
5 Honor strongly suggested, we have been meeting with the
6 various stakeholders over the past day. Accordingly and in
7 the interest of bettering the swap settlement, the parties in
8 interest are attending court-ordered mediation under the
9 mediation program that your Honor has established Monday and
10 Tuesday of next week, and Ms. Ball and Mr. Hertzberg will be
11 attending that mediation on behalf of the city's legal team.

12 If the city is, as it hopes, successful in bettering
13 the swap settlement, the city will promptly file an amended
14 motion setting forth the revised terms of its agreement and
15 bring that amendment before the -- that amended agreement
16 before the Court at your Honor's earliest convenience. With
17 the understanding that your Honor is unavailable until
18 January 2nd, the city will plan to produce Mr. Orr for a
19 deposition on December 31st in Washington, D.C., and will
20 make Mr. Orr available to testify at a continuation of this
21 week's hearing on the first date your Honor is available.
22 Mr. Orr will be, in such event, fully prepared to testify
23 with respect to the city's decision to enter into any such
24 agreement which results from this process.

25 At the same time and in the interim, we're doing, as

1 we're bound to do, whatever is necessary to protect the city
2 residents and interests and to preserve the city's ability to
3 take whatever course of action it ultimately deems necessary.
4 Indeed, the city, through Pepper Hamilton, is issuing
5 litigation hold notices to UBS, BAML, Orrick, Clark Hill, and
6 Lewis & Munday as well as to the COP banks with the intention
7 of preserving the city's ability to fully and completely
8 litigate its rights should an appropriate agreement not be
9 obtained. To the extent that the city determines that such
10 interests are best served by seeking preliminary or other
11 relief from this Court, the city will do so expeditiously.
12 That's all I have, your Honor.

13 THE COURT: Thank you, sir. Would anyone like to be
14 heard regarding this matter?

15 MR. MARRIOTT: Good morning, your Honor. Vince
16 Marriott, Ballard Spahr, on behalf of EEPK and affiliates. I
17 would just like to ask the debtor to confirm that it does
18 not --

19 THE COURT: Excuse me one second.

20 MR. MARRIOTT: Yes.

21 THE COURT: I just need you to listen to this.

22 MR. CULLEN: I'm very sorry, your Honor.

23 THE COURT: That's okay. Go ahead, sir.

24 MR. CULLEN: I apologize, Vince.

25 MR. MARRIOTT: That's fine. I would just like the

1 debtor to confirm that at any continued hearing on this
2 matter, it will be producing no witnesses that it has not
3 previously identified, no documents that it has not
4 previously produced other than any revised agreement.

5 MR. CULLEN: That is certainly our intention, your
6 Honor.

7 THE COURT: All right. Thank you. Would anyone
8 else like to be heard regarding this matter? No? It would
9 be the Court's intention -- yes. Yes or no?

10 MR. GORDON: Thank you, your Honor. Robert Gordon
11 of Clark Hill on behalf of the Retirement Systems. Number
12 one, the proposal that's been made, just for the record,
13 wasn't conveyed to any of us before just now, so we're trying
14 to process -- I don't know why an e-mail couldn't have gone
15 out last night.

16 THE COURT: Do you want a minute to process it?

17 MR. GORDON: Could we?

18 THE COURT: Absolutely.

19 MR. GORDON: I would appreciate that. I would like
20 to caucus.

21 THE COURT: Go right ahead.

22 MR. GORDON: Can we caucus for a moment because I'd
23 like to get some --

24 THE COURT: Well, all right. Fair enough. How much
25 time would you like?

1 MR. GORDON: Just five minutes even.

2 THE COURT: Ms. Green says five minutes. Okay.

3 MR. GORDON: Would that be okay?

4 THE COURT: On the safe side, we'll reconvene at
5 10:15.

6 MR. GORDON: Thank you, your Honor.

7 THE CLERK: All rise. Court is in recess.

8 (Recess at 10:04 a.m. until 10:15 a.m.)

9 THE CLERK: Court is in session. Please be seated.
10 Recalling Case Number 13-53846, City of Detroit, Michigan.

11 MR. MARRIOTT: Judge, the objectors caucused, and we
12 were in the process of sort of discussing with the debtor a
13 somewhat modified schedule. Maybe I'll let you know what we
14 were discussing. Apparently Mr. -- we had hoped that Mr.
15 Orr's deposition could be a day earlier than the 31st if the
16 hearing were going to start on the 2nd because of the
17 intervening holiday and the need to get a transcript and
18 review it and prepare. Apparently Mr. Orr is not available
19 any earlier than the 31st, so our next proposal was that
20 trial recommence, if it is to recommence, on the 3rd rather
21 than the 2nd. We don't know, frankly, whether it would
22 conclude the day it started because there's both witnesses,
23 and there is argument, and the debtor is -- has indicated a
24 reluctance to start on the 3rd if it meant we would not
25 finish until the following Monday, but it's the objectors'

1 view that we need at least a business day between Mr. Orr's
2 deposition and the commencement of the trial.

3 The other issue that we had which we did not have
4 the opportunity to raise with the debtor yet but I'll raise
5 now was a deadline by which if the debtor is going to file a
6 revised agreement that it be done so, and what we were going
7 to propose to the debtor was that it be noon on Friday, the
8 27th. They have not had a chance to react to that because I
9 had not communicated that to them.

10 And the third would be that if -- presumably I mean
11 I'll know because I'm in the mediation, but there are parties
12 who are not -- who are objectors that are not in the
13 mediation who will not know whether we come out of Tuesday
14 with a resolution or not, and the third suggestion would be
15 that the debtor communicate by close of business on Tuesday
16 whether it will be filing a revised motion by midday on
17 Friday. Those were our thoughts. We've communicated some of
18 them to the debtor but not all.

19 MR. CULLEN: Your Honor, our main objective here is
20 to get this done as quickly as possible, and if we could get
21 it all done on the 3rd, that would be -- that would be fine
22 with us, but we're -- you know, it's always at my back I hear
23 times winged chariot hurrying near for the city here.

24 And with respect to some indication of where we are
25 at the end of Tuesday, the world probably doesn't end if the

1 discussions leaked over or there were things to be done, so I
2 would -- the city would commit to give some kind of a status
3 at that time, and we will certainly --

4 THE COURT: All right. But on that I would ask you
5 to communicate to the attorneys who have appeared here in
6 connection with this proceeding but not by filing in the
7 court file.

8 MR. MARRIOTT: Yes, your Honor. That would be fine.
9 And in any notice that we give we will attempt to give them
10 sufficient information while not revealing the nature of
11 anything that should remain confidential is still --

12 THE COURT: Right.

13 MR. MARRIOTT: -- negotiable within the mediation.
14 With respect to the last date, it's certainly not
15 unreasonable to propose the 27th as an absolute drop dead
16 date. We'll certainly attempt to have it as soon as we can
17 possibly have it.

18 THE COURT: Okay. Regarding the hearing, it doesn't
19 feel likely -- it's possible, but it doesn't feel likely that
20 if we started on January 3rd we would conclude on January
21 3rd. How much of a problem is that? As far as I'm
22 concerned, we could continue to Saturday, the 4th. I don't
23 know about the availability of the building.

24 MR. MARRIOTT: I'm not allergic to Saturday, your
25 Honor, so that would be -- that would be fine with us as

1 well.

2 THE COURT: Anybody want to be heard about that
3 question?

4 MR. GORDON: Your Honor, again, Robert Gordon for
5 the record. If we had to pour over from the 3rd to the 4th
6 on that Saturday, we are amenable to that, so we were fine
7 with that suggestion.

8 If I may raise one other issue that was omitted in
9 the discussion here, but we had the discussion when we
10 caucused, the suggestion that Mr. Orr's deposition should
11 take place in Washington, D.C., where none of the creditors
12 are except for Ambac's counsel pretty much is, I would
13 suggest, offensive to some of us who are here in Detroit. He
14 is the emergency manager of the City of Detroit. They have
15 suggested this in the past, and we suggested that he should
16 be here, and we continue to suggest that he should be here.
17 He has accommodated us in the past. I don't think we should
18 all have to go to D.C., your Honor.

19 THE COURT: I wondered if you were going to bring
20 that up.

21 MR. GORDON: Yes, your Honor. Yes.

22 THE COURT: What's the issue with D.C.?

23 MR. CULLEN: We were, your Honor, trying to
24 calculate out the number of participants in this deposition
25 from various places, and we have a lot of New York, we have a

1 lot of Philadelphia, we have some Chicago, and we have one
2 cross-examining party from Detroit. And the witness has been
3 deposed in both places, Washington and Detroit, back and
4 forth. It just seemed to us in terms of the overall travel
5 budget of the matter that Washington was as convenient as any
6 other place for the counsel involved. If it's -- the world
7 doesn't end either way, but that was our thinking.

8 THE COURT: Thank you, sir. Anyone else besides Mr.
9 Gordon want to be heard on this?

10 MR. GORDON: I'll let Mr. Goldberg speak, but I just
11 wanted to clarify there's at least three parties in Detroit.
12 There are the retiree associations, there's Mr. Goldberg, and
13 there's the Retirement Systems, so there's at least three
14 here, your Honor. And, as I said, other than counsel for
15 Ambac, I don't believe any other counsel is in D.C.

16 MR. GOLDBERG: Jerome Goldberg appearing on
17 interested party, David Sole. I also find it offensive that
18 the emergency manager for the City of Detroit -- we have to
19 go to Washington to depose the representative for the City of
20 Detroit, and it's burdensome, and burdens are always
21 relative. I would submit that the burden on some of us in
22 Detroit is a little greater than the burden that it is on
23 some of these institutions that can afford it more, but more
24 important than that is the fact that he's representing
25 Detroit. He should be in Detroit.

1 THE COURT: I agree. His deposition should be in
2 the City of Detroit, and the Court so orders. From the
3 city's perspective, what's the problem with going over to
4 January 7th should January 4th -- I'm sorry -- January 6th --
5 what's the problem with going to January 6th should January
6 4th, a Saturday, not be feasible for the building?

7 MR. HERTZBERG: Your Honor, Robert Hertzberg, Pepper
8 Hamilton. It is -- I've been an active participant in this,
9 and I'm not available after that weekend for a week, so the
10 thought was if we started on the 2nd, we would easily be done
11 with the 2nd and with the 3rd available if the Court had that
12 scheduled. When it became a problem for the objectors that
13 they wanted one business day, the thought was if we pushed
14 over to the weekend. It happens to be my scheduling problem.

15 THE COURT: Well, all right. I will inquire of the
16 building regarding its availability on the 4th, but, frankly,
17 if I'm advised that it will create extraordinary expense for
18 the judiciary to turn the utilities on and have all of the
19 security services available, with all respect to Mr.
20 Hertzberg, we may have to go to Monday, the 6th. I certainly
21 agree with the objecting parties that with a deposition on
22 the 31st, it is not appropriate to start on January 2nd, so
23 with that one open issue, I think we are in agreement on
24 everything else. All right. I trust you'll work out the
25 time of your deposition. Anyone want to bring up anything

1 further at this time?

2 MR. MARRIOTT: Can I ask, Judge, where we ended up
3 on the filing of the motion if there's an amended motion to
4 be filed?

5 THE COURT: I heard that there was a commitment to
6 that.

7 MR. MARRIOTT: By Friday? I mean on Friday? Is
8 that --

9 MR. CULLEN: You said the 27th; right?

10 MR. MARRIOTT: Is that the 27th? Whatever the
11 27th --

12 MR. CULLEN: Yeah. Whatever you said, the 27th
13 seems sensible to us.

14 THE COURT: That's what I heard. Friday, the 27th.

15 MR. MARRIOTT: Okay.

16 THE COURT: All right. Thank you. We're in recess.

17 THE CLERK: All rise. Court is adjourned.

18 (Proceedings concluded at 10:25 a.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

December 26, 2013

Lois Garrett